IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 22ND NOVEMBER 2006 / 1ST AGRAHAYANA 1928

Crl.MC.No. 2865 of 2006(C)

CC.404/2003 of JUDL.MAGISTRATE OF FIRST CLASS-II(MOBILE),ALAPPUZHA

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PETITIONER:

K.UTHAMAN, AGED
S/O. KARUNAKARAN, RESIDING AT KALITHATTUNGAL
HOUSE, SOUTH ARYAD, AVALOOKUNNU P.O.,
AMBALAPUZHA TALUK, ALAPPUZHA DISTRICT.

BY ADV. SRI.MANJU ANTONEY
SRI.K.C.SUDHEER

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
CHIEF SECRETARY TO THE GOVERNMENT,
THROUGH PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. MANGALANANDAN, AGED ABOUT 51 YEARS,
S/O. ARUMUGHAN, DEEPAK BHAVAN,
ARYADU SOUTH PANCHAYAT, WARD NO.VI,
AVALOOKUNNU P.O., ALAPPUZHA.

3. VARKEY MATHEW, AGED ABOUT 62 YEARS,
S/O. VARKEY, THEKKETHAYYIL HOUSE,
AVALOOKUNNU P.O., ALAPPUZHA DISTRICT.

4. V.RAVEENDRAN NAIR, AGED ABOUT 53 YEARS,
S/O. NARAYANAN PILLAI, KUTTIPPURATHU VEEDU,
AVALOOKUNNU P.O., ALAPPUZHA.

5. P.T.SEBASTIAN, AGED ABOUT 49 YEARS,
S/O. CHIYACHAN, PALACKAL HOUSE,
SIEVIEW WARD, ALAPPUZHA DISTRICT.

6. K.P.RADHAKRISHNA PANICKER,
AGED ABOUT 50 YEARS, PRABATH,
KILLIKATTU HOUSE, KALAVOOR P.O., ALAPPUZHA.

7. K.C.JOSEPH, AGED ABOUT 51 YEARS,
S/O. K.V.CHACKO, KALATHIL HOUSE,
GURUPURAM AVALOOKUNNU P.O., ALAPPUZHA DISTRICT.

8. T.K.MOHANAN, AGED ABOUT 52 YEARS,
S/O. KUMARAN, PADIPPURACKAL HOUSE,
SOUTH ARYADU P.O., WEST OF GURUPURAM,
ALAPPUZHA.

9. K.MADANAPPAN, AGED ABOUT
POKKATHEVELI HOUSE, WARD NO.7,
AVALUKKUNNU P.O., ALAPPUZHA.

BY ADV. SRI.E.D.GEORGE
SMT.ASHA CHERIAN
PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 22/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2865 of 2006

Dated this the 22nd day of November 2006

O R D E R

The petitioner has been found guilty, convicted and sentenced in eight prosecutions, all under Section 138 of the Negotiable Instruments Act initiated by different complainants, that is respondents 2 to 9 herein. The petitioner has been sentenced to undergo various terms of substantive imprisonment. There is also a direction to pay compensation and default sentences imposed in all these cases. The verdicts of guilty and convictions have become final now, some by judgments of the appellate court and some by orders passed by the revisional court.

2. In this petition, the petitioner claims only a short and limited relief. He prays that powers under Section 482 Cr.P.C may be invoked and direction may be issued under Section 427 Cr.P.C that the substantive sentences of imprisonment in all these eight cases shall run concurrently. The petitioner is stated to be undergoing imprisonment from 02/05/2006. The learned counsel for the petitioner relies on the decision of the Division Bench of this court in Subramonian v. State of Kerala 1983 KLT 452] and Abdul Gafoor v. Abdulla [2006(1)KLD(Crl) 200].

3. The prosecution is initiated by eight different complainants. The offences alleged in these eight cases are different and distinct though all are punishable under the same section of offence punishable under Section 138 of the N.I.Act.

4. The direction for concurrency in these situations must be an exceptionable relief which the petitioner can claim. I take note of the fact that all these offences are punishable under Section 138 of the N.I.Act and the crux of the offence is inability/failure to pay the amount within the stipulated time after receiving the notice of demand. Though it is a culpable offence, the crux of the offence is only failure to pay the amount. In all these cases, I do further note that directions for payment of compensation have been issued for adequately compensating the complainants. Default sentences have also been imposed. Following the dictum in the decision of the Division Bench in 1983 KLT 452 (SUPRA), I am satisfied that this is a fit case where the exceptional relief under Section 427 - to direct that the substantive sentence imposed in these eight different cases can run concurrently can be issued in favour of the petitioner. In coming to this conclusion, I do take note of the circumstances that in directing concurrency, the right of the complainant to be adequately compensated is not in any way being disturbed by me. It is also evident that though the petitioner is continuing in custody from 02/05/2006, he has not been able to raise the amount to avoid the default sentence in any one of the cases. I am satisfied that this is an exceptionally eminent case where humane compassion of this court can flow in favour of the petitioner and help him to avoid the liability to undergo sentences imposed in these identical prosecutions though by different complainants consecutively. This cannot, of course, be a

precedent that can be followed as a matter of course and it is only the exceptionable nature of the circumstances in this case that persuades me to invoke the jurisdiction under Sections 482 and 427 Cr.P.C to issue such a direction.

4. In the result, this petition is allowed. It is directed that the substantive sentences of imprisonment imposed in the following cases, as modified by appellate/revisional judgments/orders shall run concurrently. By way of abundant caution and clarification, it is stated that the default sentences shall have to be undergone separately and consecutively

1. C.C.No.404 of 2003 of J.F.C.M-II, Alappuzha,
2. C.C.No.41 of 2004 of J.F.C.M-II, Alappuzha,
3. C.C.No.429 of 2003 of J.F.C.M-II, Alappuzha,
4. C.C.No.73 of 2004 of J.F.C.M-II, Alappuzha,
5. C.C.No.901 of 2003 of J.F.C.M-I, Cherthala,
6. C.C.No.132 of 2004 of J.F.C.M-II, Alappuzha,
7. C.C.No.323 of 2004 of J.F.C.M-II, Alappuzha and
8. C.C.No.364 of 2003 of C.J.M, Alappuzha.

5. The learned counsel for the fifth respondent prays that it may be clarified that undergoing the default sentence shall not absolve the petitioner of the obligation to be proceeded against under Section 421 read with 431 Cr.P.C. That has already been made clear in the decision in Saji Kumar v. Soman Pillai [2006(3)KLT 679]. No further directions appear to be necessary.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006